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**UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA**

11 In re

13 JOHN D. WILLIAMS,

16 Debtor.

Case No. SV 01-13240 GM

Chapter 11

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**MEMORANDUM OF OPINION RE  
CONTESTED ELECTION OF TRUSTEE**

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**I. INTRODUCTION**

20 This case was originally filed on April 6, 2001 under  
21 Chapter 13. The Court subsequently determined that debtor John D.  
22 Williams ("Debtor") was ineligible to be a debtor under that chapter  
23 and converted the case to Chapter 7. Brad Krasnoff was appointed  
24 interim trustee. At the first meeting of creditors, Rosemary Swenson  
25 ("Swenson")<sup>1</sup> called for a contested election and voted for Byron Moldo  
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<sup>1</sup> Rosemary Swenson is named individually and as a Trustee of the Marie L. Swenson Living Trust U/T/D. The Trust is also named. Unless otherwise noted, a reference to Swenson is meant to cover all capacities.

1 to become permanent trustee. On March 26, 2002, Swenson filed a  
2 motion to certify the election of Byron Moldo in place of Brad  
3 Krasnoff as Chapter 7 trustee under 11 U.S.C. § 702.<sup>2</sup> On April 9,  
4 2002, on the application of Debtor, the Court entered an order  
5 converting this case from Chapter 7 to Chapter 11, but the Court also  
6 required that a trustee be appointed. The United States Trustee has  
7 selected Brad Krasnoff as interim Chapter 11 trustee and counsel for  
8 Swenson has indicated that once again there will be a contested  
9 election at the 341(a) meeting, which is scheduled for May 21, 2002.  
10 For that reason the motion brought by Swenson is not moot, but will  
11 be deemed also to be a motion to determine whether Swenson is eligible  
12 to vote for a trustee under Chapter 11 pursuant to § 702(a), as  
13 incorporated in § 1104(b). Specifically, this opinion addresses the  
14 issues of whether Swenson's claims are undisputed, unsecured and  
15 allowable as required by § 702(a)(1) and whether she has an interest  
16 which is not materially adverse to the interest of creditors entitled  
17 to distribution as mandated by § 702(a)(2).

## 18 19 II. PROCEDURAL FACTS

20 On November 29, 2000, Swenson was granted judgment in the  
21 Los Angeles Superior Court against Debtor in the amount of \$145,972.  
22 She recorded an abstract of judgment in Ventura County on December 20,  
23 2000. On February 1, 2001, Swenson was awarded a second judgment in  
24 the same case in the amount of \$29,306.07. She recorded her abstract  
25 on that judgment in Ventura County on February 23, 2001, which was  
26 within the 90-day period before the bankruptcy was filed. She also  
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28 <sup>2</sup> Unless otherwise noted, all references to sections are to Title  
11 of the United States Code.

1 recorded abstracts for both judgments in Riverside County on March 8,  
2 2001. Both judgments are on appeal.

3 Swenson filed two proofs of claim in this case, each  
4 asserting a secured interest in real property, which she valued at  
5 \$507,000 (claims 5 and 6 as amended August 13, 2001).

6 Debtor's amended Schedule A identifies two parcels of real  
7 property: a residence in Ventura County, which he valued at \$430,000,  
8 and vacant land in Riverside County, which he valued at \$3,000. Prior  
9 to the recording of Swenson's abstracts of judgment and between 91 and  
10 365 days before the bankruptcy was filed, Debtor recorded two deeds of  
11 trust on his residence: one in favor of Colleen Hain (his former  
12 spouse) and the other in favor of Maria Callas (his mother). He also  
13 gave Maria Callas a deed of trust on the vacant land. If the liens  
14 created by these deeds of trust are not avoided, there may be no equity  
15 to support a secured claim for Swenson. As of this date, no adversary  
16 action has been filed challenging the Hain and Callas liens and no  
17 final determination has been made as to the fair market value of the  
18 real property.

19 Debtor scheduled Swenson's claim as contingent, unsecured,  
20 disputed, subject to setoff and in an unknown amount.<sup>3</sup> As noted, Swenson  
21 has filed two secured proofs of claim, totaling approximately \$175,000.  
22 Debtor filed objections to both claims, which have been deferred  
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24 <sup>3</sup>Williams has filed four lists of creditors holding unsecured non-  
25 priority claims (Schedule F). All except that of June 6, 2001 added new  
26 creditors to the case. Swenson had been included individually and as  
27 Trustee on the May 14, 2001 filing, but Williams had not indicated that  
28 she was disputed in her individual capacity. When he filed an Amended  
Schedule F on June 6, 2001, he included Swenson in her individual  
capacity and noted her claim was disputed as well as contingent,  
unliquidated, and subject to set-off.

1 pending the outcome of the state court appeals. He also filed an  
2 adversary proceeding against Swenson, on the ground that the liens  
3 created by the abstracts were preferential transfers, and a motion to  
4 remove the liens on his home under § 522(f). The adversary proceeding  
5 is pending and the § 522(f) motion is delayed until other issues can be  
6 resolved.

7 In deciding to convert this case from Chapter 13 to Chapter  
8 7, the Court used the debtor's schedules in which he listed the Swenson  
9 obligation as unsecured, relying on In re Slack, 187 F.3d 1070 (9<sup>th</sup> Cir.  
10 1999) and In re Scovis, 249 F.3d 975 (9<sup>th</sup> Cir. 2001). As part of the  
11 ruling, the Court found that the Swenson claims were liquidated and not  
12 contingent. However, the decision that they should be considered  
13 unsecured was limited to the motion to convert, as it was based solely  
14 on the schedules filed by Williams. No determination has been made as  
15 to whether the Swenson claims are disputed, since this is not an  
16 element of eligibility under § 109(e).

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18 **III. WHETHER THIS COURT HAS AUTHORITY TO TEMPORARILY ALLOW SWENSON'S**  
19 **CLAIMS FOR PURPOSES OF VOTING IN A § 702 ELECTION**

20 Swenson cites the case of In re Cohoes Industrial Terminal,  
21 Inc., 90 B.R. 67 (D.C.N.Y. 1988) to support her argument that, although  
22 this Court has not resolved Debtor's objections to her claims, the  
23 claims should be temporarily allowed for the purpose of voting at the  
24 trustee election. Moreover, Swenson argues that pursuant to that same  
25 case, a claim which is partially allowed but as to which an appeal is  
26 pending should be considered undisputed.

27 The Cohoes case was decided before the 1991 amendments to the  
28 Federal Rules of Bankruptcy Procedure expressly deleted the portion of

1 Rule 2003(b)(3)<sup>4</sup> which authorized a court to temporarily allow a claim  
2 for the purpose of voting in a disputed election.<sup>5</sup> To the extent that  
3 Cohoes relies on Rule 2003(b)(3), it is irrelevant and misleading to  
4 cite it. Yet, this is the only case cited by Swenson in support of her  
5 motion. She fails to mention a contrary California case of In re San  
6 Diego Symphony Orchestra Ass'n, 201 B.R. 978 (Bankr. S.D. Cal. 1996).

7 In Cohoes, the District Court based its holding on the  
8 existence of the estimation procedure of Rule 2003(b)(3), stating that  
9 "[b]ecause B.R. 2003(b)(3) contemplates that the holder of a claim  
10 disputed as to amount or allowability may vote for a trustee, it  
11 conflicts with the narrow interpretation of Code § 702(a)(1) urged by  
12 Mr. Baker. **This Court concludes that Code § 702(a)(1) must be read**  
13 **consistently with B.R. 2003(b)(3).**" Cohoes, 90 B.R. at 69-70 (emphasis  
14 added). There is no reasonable basis upon which Swenson can argue that  
15 Cohoes is relevant after the repeal of the estimation provision in Rule  
16 2003(b)(3). In fact, the Cohoes opinion must now be interpreted to mean  
17 that if a claim is disputed as to amount or allowability, that claim  
18 cannot be voted.

19 With the change to Rule 2003(b)(3), the Court does not even  
20 have an arguable justification to temporarily allow the Swenson claims  
21 from voting. See San Diego Symphony, supra.

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24 <sup>4</sup> Unless otherwise noted, all references to "Rule" are to the  
Federal Rules of Bankruptcy Procedure.

25 <sup>5</sup> The former Bankruptcy Rule 2003(b)(3) included the following  
26 provision: "Notwithstanding objection to the amount or allowability of  
27 a claim for the purpose of voting, the court may, after such notice and  
28 hearing as it may direct, temporarily allow it for [that] purpose in an  
amount that seems proper to the court." Darrell Dunham, Election of  
Chapter 7 Trustees Under the Bankruptcy Code, 47 Clev. St. L. Rev. 371,  
fn. 108 (1999). This sentence in Rule 2003(b)(3) was deleted in the  
revisions of 1991.

1 IV. WHETHER SWENSON'S CLAIMS ARE UNSECURED

2 Swenson is in the interesting position of professing to be  
3 both a secured and an unsecured creditor at the same time, for the  
4 same claims, depending on the issue. For purposes of voting for  
5 trustee, she asserts unsecured status. But in terms of treatment in  
6 any distribution, she argues that she is secured by Debtor's house and  
7 the vacant land. Swenson's secured status will depend on whether (1)  
8 her \$29,306.07 judgment-lien is a preference as to the house and the  
9 vacant land, (2) her \$145,972 judgment-lien is a preference as to the  
10 vacant land, (3) the trust deed to Colleen Hain is a  
11 preference/fraudulent transfer as to the house, (4) the trust deeds  
12 to Maria Callas are preferences/fraudulent transfers as to the house  
13 and the vacant land, and (5) the value of each piece of real property.  
14 Debtor is not attacking the Swenson judgment-lien on the house as a  
15 preference and therefore the only issue as to its secured nature (if  
16 the judgment is affirmed on appeal) will be whether it is avoidable  
17 under § 522(f) as impairing an exemption to which the debtor is  
18 entitled. This will depend on the value of the house and the status  
19 of the prior liens of Hain and Callas.

20 The proper time to compute the universe of voting creditors  
21 is at the time of an election. See San Diego Symphony, 201 B.R. at  
22 982, quoting In re Aspen Marine Group, Inc., 189 B.R. 859, 863 (Bankr.  
23 S.D. Fla. 1995). Since Swenson's secured claims will not have been  
24 avoided as of the date of the election, the Court relies on the  
25 secured proofs of claim filed by Swenson and her recorded abstracts  
26 of judgment which make her ineligible to vote.

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1                   V. WHETHER SWENSON'S CLAIMS ARE ALLOWABLE

2           Section 702(a)(1) states that only creditors who hold  
3 "allowable" claims may vote.<sup>6</sup> To the extent that Swenson asserts that  
4 her secured claims are subject to divestment as preferences and  
5 therefore could be deemed unsecured, they are not allowable. In re  
6 Centennial Textiles, Inc., 209 B.R. 31, 33 (Bankr. S.D.N.Y. 1997). If  
7 Swenson were to win in the preference action (Adv. No. SV01-01669),  
8 her claims would be secured and she could not vote. Even under her  
9 misguided theory that the Court can estimate her claims, if the Court  
10 determined that she would lose the preference action and her claims  
11 become unsecured, they are not allowable.

12           Section 502(d) requires a transferee of property where the  
13 transfer is avoidable under § 547 (preferences) to turn over the  
14 property or the claim is disallowed. Accordingly, as of the date of  
15 the election, Swenson would have had to (Chapter 7) or will have to  
16 (Chapter 11) release these liens or her claims are not allowable and  
17 she cannot vote.

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19                   VI. WHETHER SWENSON'S INTEREST IS MATERIALLY ADVERSE TO OTHER  
20   UNSECURED CREDITORS

21           Section 702(a)(2) disqualifies a creditor from voting if  
22 that creditor has an interest which is materially adverse to the  
23 interest of other creditors entitled to distribution under the  
24 sections enumerated in § 702(a)(1). While Swenson relies on Cohoes  
25 for claims estimation, she ignores its discussion of the relationship  
26 of a preference to § 702(a)(2). Cohoes, 90 B.R. at 70, citing In re

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27                   <sup>6</sup> See In re Michelex Limited, 195 B.R. 993 (Bankr. W.D.Mich 1996)  
28 for discussion of the difference between an "allowed" claim and an  
"allowable" claim.

1 Lang Cartage Corp., 20 B.R. 534 (Bankr. E.D. Wisc. 1982). When a  
2 party has received a preference which is beyond a mere suspicion and in  
3 a dollar amount which is more than minimal, she has an interest  
4 materially adverse to that of other creditors who have not received  
5 preferences. See In the Matter of NNLC Corp., 96 B.R. 7 (Bankr. D.  
6 Conn. 1989).

7 Three of Swenson's four abstracts of judgment were recorded  
8 within the 90 day pre-filing preference period. This creates more than  
9 a mere suspicion. In NNLC, there was over \$3 million in unsecured debt  
10 and the alleged preference was under \$21,000. That Court held that the  
11 relation to total claims is irrelevant and the preference was a  
12 material adverse interest. Here the smaller Swenson abstract is in an  
13 amount of over \$29,000. Therefore the interest is material.

14 There are strong policy reasons for careful enforcement of  
15 § 702(a)(2). The trustee is the representative of the estate and has  
16 the duty to make sure that all similarly situated creditors are treated  
17 alike. For that reason, the Bankruptcy Code arms the trustee with  
18 powers to set aside preferences and fraudulent transfers and to object  
19 to claims, among other responsibilities. The trustee is required to  
20 investigate claims and analyze whether they are disputed. The trustee  
21 must decide whether a secured claim is entitled to that status or  
22 whether allowing such a distribution would be unfair to unsecured  
23 creditors under the Bankruptcy Code. The Trustee will become the  
24 plaintiff in the pending adversary complaint against Swenson.

25 Because of this, the creditor who holds a potential  
26 preference and is allowed to select the trustee has a strong self-  
27 interest in electing someone who will not challenge her secured claim.  
28 Similarly, any creditor with a disputed claim would love to select her



1 future opponent. It is this conflict of interest which § 702(a)(2)  
2 seeks to prevent.

3 By virtue of her probable preferential transfer, Swenson  
4 holds an interest which is materially adverse to other creditors who  
5 did not receive preferences. Thus, she does not qualify under  
6 § 702(a)(2).

#### 8 VII. WHETHER SWENSON'S CLAIMS ARE UNDISPUTED

9 To vote in a § 702/1104(b) election, Swenson's claims must be  
10 undisputed. The Bankruptcy Court in San Diego Symphony, *supra*, noted  
11 two lines of cases concerning the method to be used in determining  
12 this: (1) the Court should consider only filed writings or claims [*In*  
13 *re Lake States Commodities, Inc.*, 173 B.R. 642 (Bankr. N.D. Ill. 1994)]  
14 and (2) the Court should review the debtors' schedules as modified by  
15 filed proofs of claim [*In re Michelex Ltd.*, 195 B.R. 993 (Bankr. Mi.  
16 1996)]. See San Diego Symphony, 201 B.R. at 981. The second approach  
17 has been adopted by the Ninth Circuit Bankruptcy Appellate Panel in *In*  
18 *re American Eagle Mfg., Inc.*, 231 B.R. 320, 329 (9<sup>th</sup> Cir. BAP 1999).

19 In the case before this Court, the schedules declare that  
20 Swenson's claim is in an unknown amount and is disputed and unsecured.  
21 The two proofs of claim, on the other hand, attach copies of writs of  
22 abstract referring to the judgments, assert specific amounts owing, and  
23 state that they are secured.

24 The Court has found no cases on point as to whether a claim  
25 based on a judgment on appeal is "undisputed" under § 702(a)(1). San  
26 Diego Symphony concerned future wage claims, which had not yet been  
27 litigated. Seeking a test, Judge Bowie noted that § 303(b)(1) [which  
28 defines who can be a petitioning creditor in an involuntary bankruptcy]

1 requires that the party hold a claim which is not subject to a "bona  
2 fide dispute" and that § 702(a)(1) leaves out the modifying phrase  
3 "bona fide." "The Congress knows how to modify 'dispute' with the  
4 requirement of 'bona fide' when it chooses . . . . This Court concludes  
5 that the test is no more than the bona fide dispute assessment of  
6 § 303(b), and it may well be even less than that." San Diego Symphony,  
7 201 B.R. at 983.

8 In the Ninth Circuit, the test for a "bona fide dispute" is  
9 that the Court "determine whether there is an objective basis for  
10 either a factual or a legal dispute as to the validity of the debt."  
11 In re Vortex Fishing Systems, Inc., 277 F.3d 1057, 1064 (9th Cir.  
12 2001), citing and adopting In re Busick, 831 F.2d 745, 750 (7th Cir.  
13 1987). When a pre-petition judgment has been obtained, should the  
14 bankruptcy court determine the viability of the appeal? Not for  
15 purposes of § 303. In re Drexler, 56 B.R. 960 (Bankr. S.D.N.Y. 1986)  
16 has been widely cited for the proposition that "a claim based upon an  
17 unstayed judgment to which an appeal has been taken by the debtor is  
18 not the subject of a bona fide dispute" under § 303. Id. at 967.

19 Swenson urges this Court to apply that proposition to  
20 § 702. But the difference in language and application between  
21 §§ 303 and 702 requires a different ruling. A petitioning creditor  
22 files an involuntary petition in an effort to collect on its claim.  
23 This is part of the enforcement action available to anyone who has  
24 enforcement rights under state or federal law. On an unstayed appeal,  
25 the creditor may execute on the judgment. Since "[t]he filing of an  
26 involuntary petition is but one of many means by which a judgment  
27 creditor may seek to attempt collection of something upon its  
28 judgment," there is no reason to disqualify the judgment creditor from

1 using this tool when there is no bar to other enforcement methods. Id.

2 But the choice of a trustee is a different matter when the  
3 judgment is on appeal - whether collection is stayed or not. The  
4 trustee may become the real party in interest and be required to  
5 prosecute, settle or dismiss the appeal. To the extent that there is  
6 a potential impact on the estate, the trustee must determine whether to  
7 prosecute, abandon, sell or settle the case. To allow the other party  
8 to the lawsuit to select the trustee would put her in an enviable but  
9 unjust position. The law does not sanction having Swenson choose her  
10 opponent on appeal any more than it allows her to select debtor's  
11 attorney. This is a very real distinction between the application of  
12 what is determined to be a claim subject to a "bona fide dispute" under  
13 § 303 and an "undisputed claim" in § 702. Therefore the test of  
14 § 702(a)(1) must be different from that of § 303 (b)(1) as it is  
15 applied to claims based on judgments on appeal<sup>7</sup>.

16 Even on pre-judgment claims, the test of "disputed" differs  
17 in §§ 702 and 303. The unique situation of election of a trustee  
18 requires a different test from filing an involuntary petition for at  
19 least two reasons. First, the trustee will "own" the debtor's rights  
20 in the dispute and the creditor should not be in a position to choose  
21 her opponent.

22 In the second place, the timing of the § 341(a) meeting - at  
23 which the election takes place - requires that the determination of the  
24 existence of a dispute be a "quick and dirty" procedure. The meeting  
25 is set for no fewer than 20 and no more than 40 days after the order  
26 for relief. Rule 2003(a). The election takes place at the meeting.

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27 <sup>7</sup> Williams asserts that the second judgment is stayed under state  
28 law as it is for attorney's fees. The Court need not reach this issue  
due to the holding set forth herein.

1 § 702(b). If there is an objection to the proof of claim or an issue  
2 of whether the claim is insufficient on its face, the determination of  
3 a permanent trustee will be delayed until the court can resolve the  
4 dispute. Rule 2003(b)(3). Any substantial delay in appointing a  
5 permanent trustee could be detrimental to the case or the debtor, as  
6 the administration of the case effectively stops until the identity of  
7 the permanent trustee is determined. While an interim trustee is not  
8 barred from administering the estate, it would be unusual for him to  
9 actively do so while his status is in question. However, any prudent  
10 interim trustee would seek an extension to file a complaint objecting  
11 to discharge under § 727, lest the 60 day statute of limitations  
12 expires before his status is determined. Rule 4004. This would delay  
13 the entry of debtor's discharge and fresh start.

14 "[A] trustee election dispute requires a bankruptcy court to  
15 balance the need for an accurate resolution of fact-based questions at  
16 the initial stage of a case with the need for a speedy resolution of  
17 the dispute, and . . . it is both undesirable and unworkable to turn a  
18 trustee election into a full scale trial." American Eagle Mfg., Inc.,  
19 231 B.R. 320, 330-1 (9<sup>th</sup> Cir. BAP, 1999), citing In re Tartan Const.  
20 Co., 4 B.R. 655, 658 (Bankr. D. Neb. 1980).<sup>8</sup>

21 The court must make a quick determination, erring on the side  
22 of the welfare of the estate and all creditors. This calls for a  
23 balancing of the issues. If the dispute is easy to resolve, complete  
24 resolution is appropriate. If, as in this case, the matter is complex  
25 or the court would normally defer to the ruling of the state appellate

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26 <sup>8</sup> "The authorities unanimously agree that a 'mini-trial' to  
27 determine if a claim is 'disputed' would unduly delay the administration  
28 of the estate at the initiation of the case. However, the bankruptcy  
court should undertake some examination to determine whether the  
claimant is entitled to vote." Dunham, 47 Clev.St.L.Rev. at 388.

1 court, the test should be whether the debtor's objection to the claim  
2 is frivolous.

3         Using a test of whether the debtor's objection to the claim  
4 is frivolous applies a lower standard under § 702 than that of  
5 § 303, which is justified by the process and issues laid out in  
6 deciding controverted involuntary filings. Entering an order for  
7 relief in an involuntary case requires the Court to find the  
8 qualification of the petitioning creditors, the number of creditors,  
9 and whether the debtor is generally not paying its debts as they come  
10 due. This often leads to massive discovery and trial. During the  
11 delay, the alleged debtor continues to operate as if no bankruptcy  
12 existed. There are substantial potential sanctions to which a bad  
13 faith petitioning creditor can be subject. These issues and safeguards  
14 do not exist in election of a trustee.

15         The facts presented to the Court concerning the Swenson  
16 claims are as follows:

17         Debtor asserts that he entered into a binding contract to  
18 purchase a house from Swenson, there were various counter-offers and  
19 eventually an escrow was opened, there were also other open escrows on  
20 the property, and he put the down payment into the escrow but Swenson  
21 failed to perform. Debtor filed a Superior Court case seeking specific  
22 performance and Swenson demanded arbitration. Debtor alleges that  
23 there was no jurisdiction for the arbitration since Swenson never  
24 agreed to arbitration as part of the original offer and Debtor  
25 withdrew his agreement to arbitration in later documents. Nonetheless  
26 the arbitration took place and Swenson was deemed to be the prevailing  
27 party. The first judgment is for attorney's fees to Swenson as the  
28 prevailing party in the arbitration. Debtor claims that there was no

1 provision in the final documents that would allow these fees. The  
2 second judgment is for fees to Swenson as the prevailing party in the  
3 Superior Court action to confirm the first award. Debtor also claims  
4 that there was no legal basis for these fees. He also attacks the  
5 amount of the award of fees as unreasonable. Should Debtor be  
6 successful as to either the jurisdiction for the arbitration or the  
7 basis and amount of fees, the judgments would be vacated or the amounts  
8 changed.

9 According to Swenson's response, Debtor cannot prevail on  
10 appeal. As to the validity of the arbitration, Swenson states that the  
11 Los Angeles Superior Court has twice granted Motions to Compel  
12 Arbitration, has order the consolidation of two arbitrations, and has  
13 confirmed the arbitration award.

14 In this case, the fact that the Superior Court has  
15 consistently ruled against the Debtor is not sufficient for me to find  
16 that the appeal is frivolous.<sup>9</sup> The outcome of the issues on appeal is  
17 sufficiently uncertain that the trustee must exercise discretion in  
18 deciding how to proceed. Therefore, for purposes of an election, the  
19 Swenson claims are disputed.

## 20 21 VIII. CONCLUSION

22 Determining the status of the Swenson claims as of the  
23 § 341(a) meeting in Chapter 7 and as of the time of this hearing,  
24 Swenson holds a disputed claim, which is either secured or not  
25 allowable pursuant to § 502(c). She also holds an interest which is

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27 <sup>9</sup> Swenson argues that Debtor's delay in proceeding with the appeals  
28 post-filing is evidence of his weak case. Debtor proposed Chapter 13  
plan would have paid 0% to unsecured creditors. Thus, if he could strip  
the lien from his home through his motion under § 522(f), he would have  
no incentive to proceed with the appeals.

1 materially adverse to other creditors denominated in § 702(a)(1).  
2 Therefore she is not in the universe of those who can call an election  
3 or vote in one.

4 The motion is denied.

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6 DATED: APRIL 29, 2002.

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10 GERALDINE MUND  
11 United States Bankruptcy Judge  
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CERTIFICATE OF MAILING  
**BRUCE BARON**

I, \_\_\_\_\_, a regularly appointed and qualified clerk of the United States Bankruptcy Court for the Central District of California, do hereby certify that in the performance of my duties as such clerk, I personally mailed to each of the parties listed below, at the addresses set opposite their respective names, a copy of the **MEMORANDUM OF OPINION RE CONTESTED ELECTION OF TRUSTEE** in the within matter. That said envelope containing said copy was deposited by me in a regular United States mailbox in the City of Woodland Hills, in said District, on

\_\_\_\_\_  
**APR 29 2002**

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**BRUCE BARON**

\_\_\_\_\_  
(Clerk)